



REPUBLIC OF KENYA

IN THE IN THE EMPLOYMENT & LABOUR RELATION COURT OF KENYA

AT MOMBASA

CAUSE 197 OF 2015

KENYA SHOE & LEATHER WORKERS UNION..... CLAIMANT

VERSUS

MODERN SOAP FACTORY RESPONDENT

RULING

Introduction

1. On 9th April 2015, the Claimant brought this suit seeking orders to compel the respondent to deduct and remit union dues to the claimant in respect to her members who are employees of the respondent. In addition the claimant prayed for an order directing the respondent to sign Recognition Agreement in favour of the claimant for purposes of collective bargaining. In response the Respondent filed defence and the Notice of Preliminary Objection (P.O) dated 15th May 2015 seeking to have the suit struck out with costs for being incompetent, premature and bad in law for offending section 48, 50 and 54 of the Labour Relations Act (LRA).
2. The gist of the P.O according to the respondent's written submissions is that the dispute now before the court is pending before a Conciliator appointed by the Labour Minister after the claimant voluntarily lodged a complaint with the Labour office. In addition the respondent contends that she has complied with the recommendations by the Conciliator to deduct and remit union dues to the claimant in respect of undisputed members. She has cited persuasive judicial precedents that support the view that once parties have submitted themselves to pre-court conciliation mechanism, the court should not entertain them before they exhausted the said alternative mechanism.
3. The Claimant has opposed the motion by her written submissions dated 10.6.2015 and filed in court on 15.6.2015. The gist of the response by the claimant is that the suit was occasioned by the respondent's failure to comply with the recommendations by the Conciliator even after being served with a demand letter dated 15.3.2015. In addition the claimant contends she has complied with section 48, 50 and 54 of the LRA and that the issue of recognition was never settled because the conciliator did not show how he verified that 29 members were not employees of the respondent. For the foregoing reasons, the Claimant prays for P.O to be dismissed with costs and she be granted the reliefs sought by the suit.

Analysis and Determination

4. After carefully perusing and considering the pleadings, the P.O and the written submissions filed, it is clear that the parties herein were engaged in conciliation of a trade dispute brought under section 62 of the LRA before the Labour office which ended with the findings and

recommendations by the Conciliator contained in his letter dated 9.3.2015. According to the Conciliator the claimant had not recruited a simple majority of the respondent's unionisable staff and recommended that she should continue with the recruitment in order to achieve the required numbers for recognition. He however recommended that the respondent should deduct and remit to the claimant, union dues in respect of the voluntary union members of the staff. The issues for determination are:

- a) Whether the dispute herein is the subject of any proceedings pending before a conciliator appointed by the Labour Minister.
- b) Whether in view of (a) above the suit herein is incompetent, premature and bad in law with respect to section 48, 50 and 54 of the LRA

Proceedings before Conciliator

4. The respondent has contended that the trade dispute herein is the same as the one initiated by the claimant under section 62 of the LRA and which is still pending before the conciliator. The question that arises is how long should such a dispute remain in the conciliation process after it has been lodged. Under section 68 of the Act a trade dispute is deemed settled after conciliation if an agreement in writing is signed by the parties and the conciliator and lodged with the minister. On the hand, section 69 of the Act provides that a trade dispute is unresolved and conciliation proceedings closed if the conciliator issues a certificate that the dispute has not been resolved by the conciliate; or thirty day period from the appointment of the conciliator or any longer period agreed by the parties, expires.

5. From the foregoing provisions it is clear that a trade dispute does not last before a conciliator forever. It must come to an end within 30 days after the appointment of the conciliator unless the parties agree to extent the period. In this case the dispute was never resolved as no written agreement was signed by the parties and the conciliator as provided under section 68 of the LRA. Likewise the dispute was never terminated by the conciliator through a certificate under section 69 (a) of the Act.

6. The said proceedings therefore ended automatically under section 69 (b) on 25.2.2015 when the parties met at the conciliator's office following a written agreement signed by them and the conciliator dated 27.1.2015. In view of this court, although the said agreement never specifically stated that time had been extended for purposes of the conciliation, the court infers that there was constructive consent of the disputants to extent the period to 25.2.2015. Consequently the court finds that there is no trade dispute related to the one before the court pending before any Conciliator.

Whether the suit is incompetent, premature and bad in law

7. In view of the foregoing findings that the trade dispute was not settled and that there are no pending conciliation proceedings at the Labour office, the court finds that the suit herein is not incompetent, premature and bad in law. Section 73(1) of the LRA provides as follows:

“If a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Industrial Court in accordance with the rules of the Industrial Court.”

Whether the respondent is remitting union dues to the claimant is immaterial because she is only forwarding what her employees have voluntarily authorized in exercise of their constitutional rights.

Disposition

5. For the reasons aforesaid, the Respondent's P.O dated 15th May 2015 is dismissed with costs. This

ruling will apply to the respondent in ELRCC No. 615 of 2015 as agreed by the parties on 25.6.2015.

Signed, dated and delivered in Mombasa this 25th day of September 2015

Onesmus Makau

Judge